

APR 16 1981

Dunge

Gentlemen:

Your application for exemption from Federal income tax under the provision of section 501(c)(3) of the Internal Revenue Code has been considered.

The information submitted discloses that you were incorporated under the [REDACTED] Non-Profit Corporation Act on [REDACTED], for the purpose of providing nutritious food and other goods and services produced in an environmental sound manner, to create a means of education and communication to nurture working relationship at the local level, to support spiritual and social growth of individuals and community, and to follow a course in accordance with the Cooperative Association Act which you find beneficial.

Your application for exemption states that your members meet together to discuss benefits of nutritional food produced in a sound environmental manner and to provide information to one another about the benefits to prepare the food. You also state that you publish a monthly newsletter containing educational information and information about available goods and services and your members combine their resources to purchase food wholesale and the food is distributed to your members.

Your income is derived from the sale of the food to your members, and membership fees. Expenditures are for the purpose of purchasing the food wholesale, and other benefits of your members.

Membership is open to any person subscribing to your aims and paying a membership fee of \$[REDACTED].

One of your primary activities is purchasing groceries for your members at the lowest possible price on a cooperative basis.

CODE	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER
	[REDACTED]						
SUR NAME	[REDACTED]						

Section 501(c) of the Code describes certain organizations exempt from Federal income tax under section 501(a) and reads, in part, as follows:

"(3)Corporations, *** fund, or foundation, organized and operated exclusively for religious, charitable, scientific, *** literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involved the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

Section 1.501(c)(3)-1 of the regulations provides, in part, as follows:

"(a)(1)In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt."

"(a)(2)The term 'exempt purpose or purposes,' as used in this section, means any purpose or purposes specified in section 501(c)(3), as defined and elaborated in paragraph (d) of this section."

"(b)(1)(i)An organization is organized exclusively for one or more exempt purposes only if its articles of organization (referred to in this section as its 'articles') as defined in subparagraph (2) of this paragraph:

(a)Limit the purposes of such organization to one or more exempt purposes; and

(b)Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes."

[REDACTED]

"(b)(1)(iii) An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes, even though such organization is, by the terms of such articles, created for a purpose that is no broader than the purposes specified in section 501(c)(3).
see "

"(b)(4) Distribution of assets on dissolution. An organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal Government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles or the law of the State in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders."

"(c)(1) Primary activities. An organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose."

"(c)(2) Distribution of earnings. An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals."

"(d)(1)(ii) An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (1) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interest such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interest."

Revenue Ruling 73-349, 1973-2 cumulative bulletin 179 held that an organization formed to purchase groceries for its membership at the lowest possible prices on a cooperative basis is not exempt from tax as a social welfare organization under section 501(c)(4) of the Code.

In the case of Better Business Bureau v. U.S., 326, U.S. 279 (1945) Ct. D. 1650, it was held that the presence of a single noncharitable or noneducational purpose, if substantial in nature, will preclude exemption under section 501(c)(3), regardless of the number or importance of truly charitable or educational purposes.

Based on the information presented, we have concluded that you are not organized and operated exclusively for section 501(c)(3) purposes, and you are not entitled to exemption from Federal income tax under the provision of section 501(c)(3). You are not organized for 501(c)(3) purposes since your purposes and dissolution provision in your Articles of Incorporation is considerably broader than those to which an organization described in section 501(c)(3) is restricted. You are not operated exclusively for 501(c)(3) purposes since one of your primary activities is purchasing groceries for your members at the lowest possible price on a cooperative basis, which serves the private benefit of your members, and any benefits to the public is not sufficient to meet the requirement of the regulations that you be operated primarily to serve a public rather than a private interest. Therefore, you are required to file Federal income tax returns on Form 1120.

It follows, therefore, that contributions to you are not deductible by donors under section 170 of the Code.

If this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by section 6104(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).

If you do not agree with these conclusions, you may, within 30 days of the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 890 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

(5)

[REDACTED]

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible. You should also file the enclosed Federal income tax return(s) within 30 days with the Chief, Employee Plan/Exempt Organization Division 1100 Commerce, Dallas, Texas 75242.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Sincerely,

[REDACTED]
District Director

Enclosures
Publication 812
Form 6018
Form 1120